



June 2, 2011

KENNETH L. MICKENS, ESQUIRE LLC
LEGAL CONSULTING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Petition of UGI Utilities, Inc. Electric Division
For Approval of its Energy Efficiency and
Conservation Plan
Docket No. M-2010-2210316**

RECEIVED
2011 JUN -2 AM 10:16
PA PUC
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Initial Brief of the Sustainable Energy Fund for filing in the above-cited proceeding. Copies have also been provided as indicated on the Certificate of Service.

Respectfully submitted,

Kenneth L. Mickens, Esquire
I.D. #31255
Attorney for the Sustainable
Energy Fund

KLM/bls

Cc: Honorable Susan Colwell, Administrative Law Judge
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. :
Electric Division for Approval of : **Docket No.**
Its Energy Efficiency and : **M-2010-2210316**
Conservation Plan :

**INITIAL BRIEF
OF THE
SUSTAINABLE ENERGY FUND**

Kenneth L. Mickens, Esquire
PA Attorney ID #31255
316 Yorkshire Drive
Harrisburg, PA 17111

Dated: June 2, 2011

RECEIVED
JUN 02 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TABLE OF CONTENTS

I. INTRODUCTION	1
II. HISTORY OF THE PROCEEDING.....	4
III. SUMMARY OF ARGUMENT	5
IV. ARGUMENT.....	6
A. Burden of Proof/Applicable Legal Standard.....	6
B. Filed Plan.....	6
1. Position Regarding Approval of Plan as Filed	6
2. <i>Filed Plan's Adherence to Commission's December 23, 2009 Secretarial Letter</i> <i>Guidelines - N/A</i>	7
3. Filed Plan's Cost Effectiveness - N/A.....	7
4. Filed Plan's Voluntary Nature/Company's Ability To Withdraw Plan If Commission Removes Revenue Recovery Mechanism.....	7
C. Proposed Modifications to Filed Plan	7
1. Elimination of Any Revenue Recovery Mechanism - N/A.....	7
2. Elimination or Modification to Fuel Switching Program.....	8
3. Inclusion of Peak Load Reduction Targets - N/A.....	10
4. Reduction in Total Plan Expenditure Levels - N/A.....	10
5. Recovery of Plan Costs by Customer Class - N/A.....	10
6. Expansion or Modification of Customer Education - N/A.....	10
7. <i>Funding Percentage for Residential Lighting - N/A</i>	10
8. Modification to Commercial Lighting - N/A.....	10
9. Notice Period for Change in Plan Rider Charges - N/A	10
10. Necessity for Prudence Review of Plan - N/A.....	10
11. Applicability of the Plan to Small Business Customers - N/A.....	11

12. Other Modifications - N/A	11
V. CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>Burleson v. Pennsylvania Public Utility Commission</i> , 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983).....	5
<i>Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission</i> , 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975), as quoted in <i>Norfolk & Western Railway Company v. Pennsylvania Public Utility Commission</i> , 489 Pa. 109, 128 (1980).	5

Commission Orders

Commission’s August 27, 1998 Order at Docket No. R-00973954	2
---	---

Statutes

73 Pa. C.S.§§ 1648.1 - 1648.8	9
66 Pa. C.S. § 315(a).....	6
66 Pa. C.S. § 332(a).....	6
66 Pa. C.S. §§ 2806.1 and 2806.2.....	1

I. INTRODUCTION

On November 9, 2010, UGI Utilities, Inc. - Electric Division (“UGI Electric” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a *voluntary* Energy Efficiency and Conservation Plan (“EE&C Plan”). On November 14, 2008, Act 129¹ became law in Pennsylvania and was made applicable to electric distribution companies (“EDCs”) with at least 100,000 customers. Although Act 129 does not require the filing of an EE&C Plan by EDCs with less than 100,000 customers, the Commission has recognized by Secretarial Letter dated December 23, 2009, that the implementation of energy efficiency and conservation measures can assist *all* electric customers in mitigating retail electric rate increases and ensure affordable and available electric service. UGI Electric² has filed its voluntary EE&C Plan in response to the Commission’s Secretarial Letter.

¹ Act 129 of 2008, P.L. 1592, 66 Pa. C.S. Sections 2806.1 and 2806.2 (“Act 129”).

² UGI Electric has 62,000 customers in Pennsylvania. UGI Electric Petition, p. 2.

UGI Electric states in its Petition that its “portfolio of programs is designed to provide customer benefits and to meet targeted energy consumption reduction goals established by UGI Electric to be reasonably achievable. In particular, these programs are designed to achieve an energy consumption reduction goal of 1% per year on UGI Electric’s system through 2014. In addition, UGI Electric anticipates that its Plan will produce peak load reductions, although the Company did not design the EE&C programs with the intent of achieving specific peak load reduction targets.”³

The Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) filed a Petition to Intervene in this proceeding on December 1, 2010. SEF is a Pennsylvania corporation established at the conclusion of PPL Electric’s Restructuring proceeding and pursuant to the terms of the Joint Settlement of that proceeding, approved by the Commission’s August 27, 1998 Order at Docket No. R-00973954. SEF’s mission is to promote, research and invest in clean and renewable energy technologies, energy

³ UGI Electric Petition, p. 5.

efficiency, energy conservation and sustainable energy enterprises that provide opportunities and benefits for electric ratepayers.

II. HISTORY OF THE PROCEEDING

A Prehearing Conference was held in this proceeding on January 5, 2011 in Harrisburg, at which time a litigation schedule was set. The other parties to this proceeding are the Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). An evidentiary hearing was held in Harrisburg on May 4, 2011. At this time, UGI Electric and SEF introduced into the record a Stipulation between the two parties. Under the terms of the Stipulation, UGI Electric agrees to “adopt, as part of an EE&C Plan that it implements at the conclusion of this proceeding, if any, SEF’s recommended solar installation rebate for any qualifying residential solar thermal water heating system.” In exchange, SEF agrees to “withdraw its opposition to the Plan...and...pursue advocacy before...the Commission that is consistent with approval of the Plan as modified by this Stipulation.”

III. SUMMARY OF ARGUMENT

SEF asserts that UGI Electric's proposed EE&C Plan is worthy of distinction because it apparently is the first such plan to project *actual* reductions in energy consumption. As the record reflects, SEF originally argued in this proceeding that the fuel switching program portion of UGI Electric's EE&C Plan should be amended to allow Tier I sources to be eligible for rebates to electric consumers. As a result of the Stipulation between UGI Electric and SEF, electric consumers who choose solar water heating as an alternative source, will be eligible for a rebate. SEF believes that this change to the Company's proposed EE&C Plan represents a significant advancement. This change greatly improves its proposed fuel switching program and represents a significant step toward fuel neutrality. Consequently, SEF believes UGI Electric's EE&C Plan should be approved by the Commission.

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

The Public Utility Code at 66 Pa. C.S. § 315(a) and 66 Pa. C.S. § 332(a) clearly indicate that UGI Electric has the burden of proof in this proceeding. When a party bears the burden of proof, in addition to establishing a prima facie case, the party must also establish that “the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.”⁴ Substantial evidence has been defined as “that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”⁵

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

⁴ *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983).

⁵ *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Commonwealth Ct. 1, 337 A.2d 922 (1975 as quoted in *Norfolk & Western Railway Company v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 128 (1980).

As discussed earlier in this Initial Brief, SEF believes that UGI Electric's EE&C Plan should be approved as amended by the Stipulation with SEF.

2. Filed Plan's Adherence to Commission's December 23, 2009 Secretarial Letter Guidelines - N/A⁶
3. Filed Plan's Cost Effectiveness - N/A
4. Filed Plan's Voluntary Nature/Company's Ability To Withdraw Plan If Commission Removes Revenue Recovery Mechanism

As discussed earlier in this Initial Brief, SEF believes that UGI Electric should be commended for filing a voluntary EE&C plan which apparently projects actual reductions in consumption.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism - N/A

⁶ The designation "N/A" indicates that SEF has not taken a position on this issue.

2. Elimination or Modification to Fuel Switching Program

SEF witness John M. Costlow has testified that UGI Electric should be commended for proposing to offer its ratepayers an EE&C program.⁷ In this regard, Mr. Costlow states that “the Company not only voluntarily filed this plan but also submitted a plan which by their calculations does not merely slow the rate of growth of electric consumption in their territory but is projected to lead to an actual net reduction in consumption from current levels.”⁸

SEF has a particular interest in the proposed fuel switching program. A fuel switching program is one in which a demand side management program provider, in this case UGI Electric, provides assistance to encourage energy users to change from one fuel (energy source) to another, with the ultimate intent of reducing the consumption of the original fuel, in this case electricity. Closely related to this issue is the concept of *fuel neutrality*. Fuel neutrality is a program’s state of being

⁷ SEF St. 1, p. 2.

⁸ SEF St. 1, p. 3.

neutral or not supporting or favoring one source of fuel over another. SEF witness Mr. Costlow has testified that the basic premise of fuel neutrality is that “programs should be structured in such a way that the consumer (energy user) makes the energy source choice within the context of the program’s objectives, not the objectives of the sponsoring entity, which in this case is UGI Electric.”⁹

SEF’s original position in this proceeding was that UGI Electric’s fuel switching program should be made fuel neutral by allowing electric customers to obtain rebates by switching to any of the 11 Tier I resources identified in the Alternative Energy Portfolio Standards Act¹⁰ (“Act 213”) of which solar thermal is one.¹¹ In this regard, Mr. Costlow offered data supporting his position that solar thermal water heating is a cost effective alternative in addition to gas and propane, the latter two being the only alternative sources originally proposed by the Company.¹²

⁹ SEF St. 1, p. 4.

¹⁰ 73 Pa. C.S. §§ 1648.1 – 1648.8.

¹¹ SEF St. 1, pp. 5-6.

¹² SEF St. 1, pp. 6-9.

However, as discussed earlier in this Initial Brief, UGI Electric and SEF have agreed to a Stipulation which essentially provides that the Company's fuel switching program is amended to allow solar thermal water heating as an additional resource. As a result, UGI Electric customers who choose to switch to solar thermal water heating, will receive a rebate for doing so. While SEF believes that Mr. Costlow has effectively supported his contention that *all* Tier I resources should be allowed such treatment under the fuel switching program, the Stipulation represents a significant step toward fuel neutrality. Consequently, SEF believes that the Company's fuel switching program and its EE&C Plan should be approved by the Commission.

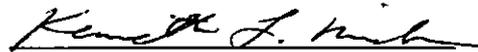
3. Inclusion of Peak Load Reduction Targets - N/A
4. Reduction in Total Plan Expenditure Levels - N/A
5. Recovery of Plan Costs by Customer Class - N/A
6. Expansion or Modification of Customer Education - N/A
7. Funding Percentage for Residential Lighting - N/A
8. Modification to Commercial Lighting - N/A
9. Notice Period for Change in Plan Rider Charges - N/A
10. Necessity for Prudence Review of Plan - N/A

11. Applicability of the Plan to Small Business Customers -
N/A
12. Other Modifications - N/A

V. CONCLUSION

For the reasons discussed herein, the Sustainable Energy Fund of Central Eastern Pennsylvania asserts that UGI Electric's EE&C Plan, as amended by the Stipulation with SEF, should be approved by the Administrative Law Judge and the Commission.

Respectfully submitted,



Kenneth L. Mickens, Esquire
PA Attorney ID #31255
Attorney for the Sustainable
Energy Fund of Central
Eastern Pennsylvania

316 Yorkshire Drive
Harrisburg, PA 17111
(717) 343-3338

Dated: June 2, 2011

Docket No. M-2010-2210316

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Sustainable Energy Fund Initial Brief has been served this day in accordance with the requirements of 52 Pa. Code Section 1.54 *et. seq.* (relating to service by a participant) upon the persons listed below.

Via First Class, Electronic Mail and/or Hand Delivery:

Mark C. Morrow, Esquire
Melanie Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Morrowm@ugicorp.com
Melanie.elatieh@ugicorp.com

Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Kevin J. McKeon, Esquire
Tori L. Giesler, Esquire
Hawke McKeon & Sniscak LLP
100 N. Tenth Street
Harrisburg, PA 17101
Kjmckeon@hmslegal.com
Lisle@hmslegal.com

David T. Evrard, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101 - 1923
Devrard@paoca.org
Cappleby@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
Commerce Building - Suite 1102
300 North Second Street
Harrisburg, PA 17101
Sgray@state.pa.us

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
Rdk@indecon.com

Charles Daniel Shields
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Chshields@state.pa.us

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Kenneth L. Mickens

Kenneth L. Mickens, Esquire

Kenneth L. Mickens, Esquire LLC

316 Yorkshire Drive

Harrisburg, PA 17111-6933

Telephone: (717) 343-3338

Fax: (717) 657-0938

Dated: June 2, 2011

RECEIVED

2011 JUN -2 AM 10:16

PA PUC
SECRETARY'S BUREAU